

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Guidelines for Evaluating the Environmental
Effects of Radiofrequency Radiation

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ET Docket No. 93-62

EMERGENCY REQUEST FOR IMMEDIATE DEFERRAL OF TRANSITION DATE

The Personal Communications Industry Association ("PCIA")¹ hereby requests an emergency deferral of the transition date in the above-captioned docket. Specifically, PCIA urges the Commission to immediately act on the pending reconsideration petitions requesting further deferral of the September 1, 1997, transition date filed by Ameritech and Northeast Louisiana Telephone, Inc. ("Petitioners").² Based on the unavailability of the revised OET Bulletin No. 65 and the impending release of a further order on reconsideration in this docket, the September 1, 1997, transition deadline should be delayed until after the issuance of the revised

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² Ameritech Petition For Partial Reconsideration, ET Docket 93-62 (filed Jan. 23, 1997); Northeast Louisiana Telephone, Inc. Petition For Partial Reconsideration, ET Docket 93-62 (filed Jan. 23, 1997).

OET Bulletin No. 65, with sufficient time for carriers to understand and comply with the new regulatory scheme. Specifically, PCIA suggests providing a transition period of one year after the issuance of the revised OET Bulletin No. 65 for new and modified sites and implementing a "rolling" compliance scheme for pre-existing facilities by requiring certifications of compliance only upon renewal.

I. INTRODUCTION

The Commission's regulations on the environmental effects of RF emissions currently in effect are based on the 1982 ANSI guidelines. In 1992, however, ANSI and IEEE approved a revised version of the guidelines and, as a result, the Commission initiated this proceeding to update its own rules. On August 1, 1996, the Commission adopted a *Report & Order* setting forth new regulations, which are a blend of the ANSI/IEEE and NCRP guidelines, and were to be made effective on January 1, 1997.³ At that time, the Commission stated it would shortly release an updated OET Bulletin No. 65, which would provide licensees with additional pragmatic information on measuring RF fields and achieving compliance with the new rules. A number of parties, including PCIA, filed petitions for reconsideration of this *Report & Order*, noting that because the *Report & Order* substantially altered the regulatory framework of environmental impact analyses, the transition period should be extended until some time after the new OET Bulletin No. 65 is issued.

³ See *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, ET Docket No. 93-62, FCC 96-326 (Aug. 1, 1996) ("*Report & Order*").

On December 24, 1996, the Commission released a reconsideration order in this docket, "extending the transition period so that the new RF guidelines will apply to station applications filed after September 1, 1997" in order to allow the Commission to address the remaining issues on reconsideration and to "allow applicants to review the revised Bulletin 65."⁴ The Petitioners requested partial reconsideration of the *Recon Order*, noting that because the issuance of OET Bulletin No. 65 should resolve many of the ambiguities in the *Report & Order*, the Commission should tie the beginning of the transition period to the release of the Bulletin. Pleading cycles on the petitions for reconsideration were completed in early 1997, and the petitions are now ripe for action.

II. WIRELESS CARRIERS NEED THE GUIDANCE PROVIDED BY OET BULLETIN NO. 65 TO COMPLY WITH THE NEW RF REQUIREMENTS

In the *Recon Order*, the Commission extended the transition period for compliance with the new rules until September 1, 1997, because:

An extension of the transition period would eliminate the need for the filing and the granting of individual waiver requests and would allow time for our applicants and licensees to review the results of the decisions we will be taking in the near future to address the other issues raised in the petitions. It would also allow applicants to review the revised Bulletin 65 and to make the necessary measurements or calculations to determine that they are in compliance.⁵

PCIA previously applauded the Commission for extending the transition date, and agreed with its reasons for doing so. PCIA does not believe, in light of the continued unavailability of revised

⁴ *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, FCC 96-487, ¶ 7 (Dec. 24, 1996) ("*Recon Order*").

⁵ *Id.*

OET Bulletin No. 65, that even the FCC's revised deadline provides sufficient time for carriers to certify that their facilities are in compliance with the new regulations. Accordingly, PCIA believes the Commission should immediately issue an emergency reconsideration order postponing the transition date until after the issuance of OET Bulletin No. 65, with sufficient time afforded for carriers to understand and comply with the new regulations.

Time is required for licensees to certify that all new and modified transmitters comply with the new regulations.⁶ Carriers cannot even estimate how long it will take to determine whether a transmitter is in compliance without needed clarifications that will ostensibly be

⁶ This problem is exacerbated for pre-existing facilities, which appear to have been grandfathered under the *Report & Order*. If compliance for pre-existing sites is required, carriers will have to survey all of their sites to determine which transmitters do and do not qualify for a categorical exclusion. Because many carriers do not have consolidated site databases, this task itself may be a tremendous undertaking. Indeed, even if a carrier has a unified site database, it is unlikely to have any information on whether sites are rooftop or tower-based, since that information was never before relevant. While PCIA understands that indefinite grandfathering of existing facilities may not be appropriate, a reasonable "rolling" compliance scheme should be utilized to allow carriers adequate time to review existing sites. PCIA suggests keying compliance requirements for pre-existing facilities to system license renewals and major modifications. PCIA notes, however, that special provisions should nonetheless be applied for renewals within the first few months after issuance of the revised OET Bulletin No. 65.

Providing a more extended transition time period is fully consistent with the Commission's obligations under the National Environmental Policy Act. In particular, because the facilities in question are those that were previously categorically excluded from compliance, there is "little potential" for these facilities to cause exposures in excess of the guidelines in any event. *Report & Order*, ¶75; see also *Second Report and Order Erratum 2* FCC Rcd 2526 (1987) (stating that for categorically excluded services, "the likelihood of the protection guides actually being exceeded is slight," even if "hypothetically, RF radiation limits could be exceeded in a few instances, such situations apparently seldom occur in actual operation."). Moreover, ANSI/IEEE have explicitly reaffirmed the safety of facilities conforming to prior ANSI standards, and therefore a slight delay in transitioning to the updated regulations would not implicate any policy concerns under NEPA. See ANSI/IEEE C95.1-1992 at 23 (stating "[n]o verified reports exist of injury to human beings or of adverse effects on the health of human beings who have been exposed to electromagnetic fields within the limits of frequency and SAR specified by . . . ANSI C95.1-1982").

included in the Commission's resolution of various petitions for reconsideration and OET Bulletin No. 65. Once the Bulletin is released, as the Commission recognizes, applicants must then "review the revised Bulletin 65 and . . . make the necessary measurements or calculations to determine that they are in compliance."⁷ In particular, carriers will need time to understand the procedures, definitions, and requirements for transmitter evaluations.

Only then can a licensee determine if a particular new or modified site will require a "routine evaluation." Given the current, very low, threshold for area-wide compliance, it appears likely that the large majority of the sites requiring routine evaluation will also require area-wide compliance assessments, a time-consuming and burdensome task. Moreover, because, as a practical matter, the information is unlikely to be available to conduct mathematical modeling for area-wide compliance checks, each of these sites will, in all probability, require a field measurement.⁸ Unless procedures for such field measurements are defined, a field measurement will probably require at least a day because a carrier will have no way of determining peak loading conditions for the transmitters in the area.⁹

PCIA does not believe that it is reasonable or feasible to require licensees to implement these new procedures by September 1, 1997. At present, the Bulletin has not been released, and

⁷ *Recon Order* at ¶7.

⁸ Although the Commission's regulatory impact statement indicates that all representatives at the site could cooperate to divide the costs of a field measurement engineer, the practical reality is that in many cases the other licensees will not be known to a prospective site applicant. Moreover, pre-existing licensees have no incentive to cooperate with the licensee, unless the site is actually shown to exceed MPE limits.

⁹ Because peak loading may not be evidenced except on a weekly, monthly, or even seasonal basis, OST Bulletin No. 65 should provide some practical guidance on the reasonable assumptions carriers are permitted to make.

it is unclear when it will be. Based upon the limited time available for transitioning to the new regulations, PCIA believes the Commission will precipitate a flood of waiver requests immediately prior to the September 1, 1997 date, resulting in an inefficient drain on FCC staff resources.

Indeed, a failure to postpone the transition date would cause irreparable harm to radio licensees. The *Recon Order* indicated that the Commission would be making "decisions . . . to address the other issues raised in the petitions [for reconsideration of the *Report & Order*]" and that these decisions would be substantive enough that the new regulatory framework will require "time for . . . applicants and licensees to review." Under the circumstances, a failure to extend the transition deadline will require licensees to expend significant—and unrecoverable—resources, including both time and money, to ensure that new sites meet with a regulatory standard that the Commission has already indicated will be superseded. Moreover, in the absence of the revised OET Bulletin No. 65, which describes compliance procedures, licensees may not be able to determine if they are, in fact, in compliance. And, as a practical matter, having relied upon the Commission to issue a timely reconsideration order and the revised OET Bulletin No. 65, it is not practically feasible for carriers to begin certifying the compliance of new and modified facilities beginning September 1, 1997. As a result, carriers will need to file waiver requests and may not be in compliance, which could result in significant civil liabilities and related transactional costs. Thus, a failure to extend the transition deadline would cause irreparable harm to licensees.

Under these circumstances, PCIA urges the Commission to adopt a transition date keyed to the release of OET Bulletin No. 65, with sufficient time for licensees to understand and comply with the new regulatory scheme. Specifically, PCIA urges the Commission to delay the

transition date by at least a year for new and modified facilities, and implement a "rolling" compliance scheme triggered by renewals for pre-existing sites.

III. CONCLUSION

The Commission should not require wireless carriers to comply with its revised RF emission rules until one year after the release of OET Bulletin No. 65. Such a revised compliance deadline will give licensees sufficient time to apply the teachings of this Bulletin to their transmission facilities, thereby determining whether the facilities are in compliance with the revised rules.

Respectfully submitted,

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